FILED
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No. 04-

IN THE

Supreme Court of the United States

SYED M. TARIQ-SHUAIB,

Petitioner,

v.

NEW YORK CITY HOUSING AUTHORITY
CONSTRUCTION DEPARTMENT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I

May parties represented by attorneys of record file "pro se" motions or do the principles underlying Rule 11 of the Federal Rules of Civil Procedure preclude same, so as to avoid prejudice to the client?

II

Does the Federal Court need to interpret the import of Orders of "closure" made pursuant to the Memorandum from the Administrative Office of the U.S. Courts dated June 15, 1973 inasmuch as same should be treated as dismissals, despite the explicit language contained therein that same are not "dismissals"?

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the Judgment of the U.S. Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The Second Circuit opinion is dated April 6, 2004 (Appendix "A") (1-2)). The District Court opinion is dated October 18, 2002, A. 3-4.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

FEDERAL RULES INVOLVED

Rule 11 of the FRCP is primarily involved; as is the Memorandum from the Administrative Office of the U.S. Courts dated June 15, 1973; and to a lesser extent FRCP 41(b) is involved because the case was erroneously dismissed under it.

STATEMENT OF THE CASE

Attorney for Petitioner commenced civil rights case. Defendant moved to dismiss in lieu of answering, which was denied. Defendant moved for summary judgment which was also denied. No time deadlines were set by the Court. Attorneys appeared throughout for Plaintiff.

The law firm of Ranni Vassalle Dussek & DiMartini LLP filed a Notice of Appearance on June 15, 2000, signed by Joseph Ranni. Previously, Mr. Dussek for Bogan, PC was appearing of record on the papers and in Court, and had signed the Complaint for Plaintiff.

The case was administratively closed on September 19, 2000 by Minute Order, A9, pursuant to the Memorandum from the Administrative Office of the U.S. Courts dated June 15, 1973. Although there were attorneys of record for plaintiff, plaintiff "pro se" moved to reopen. That motion was denied and the case was dismissed thereupon for "failure to prosecute", A 3-4 . As is clear from the District Court's decision the District Judge treated the "pro se" motion to "reopen" as one to "vacate a default". The Second Circuit affirmed by (a most) summary order, A1-2.

REASONS FOR GRANTING THE PETITION

There are two salient reasons for the Court to grant the writ: 1. because the application of FRCP 11 should not permit parties with attorneys of record to appear "pro se" without a proper substitution of attorneys; 2. because Administrative Orders of closure have to be interpreted because this case was "re-opened" upon the filing of the motion to re-open pursuant to the terms of the Administrative Order, therefore rendering the pro se motion "moot" (see entry on docket sheet of 9/3/02 "Case reopened"), but the District Court treated the "pro se" motion as if it was to vacate a default (although it was moot since the case was reopened). Both issues involve this Court's role as highest Federal Court to police practices of the lower courts, which in this instance very much needs policing.

POINT I

FRCP 11 REQUIRES ATTORNEY OF RECORD TO SIGN MOTION PAPERS

Rule 11 requires attorney's of record to sign the papers. Same fixes responsibility on the attorney's of record which has a sanguine effect on the Court and the parties.

Here, plaintiff filed a motion as a "pro se" (while the case had not been dismissed). Hence, same should not have even been accepted for filing by the Clerk. If the Clerk didn't catch the mistake, the Judge should have.

Permitting parties to file motions in cases where they have attorneys as "pro se" undermines the principles and policies behind FRCP Rule 11. In Point II herein below, those principles are highlighted because, the attorney of record would have known that such a motion was unnecessary, wasteful, and could be explained more expertly than by a "pro se". Allowing parties with attorneys of record to file "pro se" motions is also an invitation for complete chaos for the Federal Courts.

In American History the Veteran's Bonus March of the 1930's is recalled. President Hoover ordered the protesters removed by force. Franklin Roosevelt said if he were President then he would have instead of force invited the protesters into the White House for "tea".

The District Judge should have, like Roosevelt would have, told plaintiff he was not "pro se", but had an attorney, and that his case was already reopened.

POINT II

COURT NEEDS TO INTERPRET ORDERS OF CLOSURE MADE PURSUANT TO THE MEMORANDUM FROM THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS DATED 6/15/1973

The September 19, 2000 Minute Order, A9, pursuant to the Memorandum from the Administrative Office of the U.S. Courts dated June 15, 1973 is a "closing" of the case for lack of docket activity. The Minute Order recites "Nothing contained in this minute order shall be considered a dismissal or disposition of these matters, and should further proceedings in them become necessary or desirable, any party may initiate it in the same manner as if this minute order had not been entered". In other words, as soon as there was further docket activity the Minute Order was to be mooted.

In fact, after the plaintiff "pro se" filed his motion to reopen, the case was "reopened" on the docket sheet on 9/3/02 as "Case reopened", rendering any relief requested in same "moot". But the Court erred in addition to not holding the relief requested as "moot", or part of an impermissible pro se filing, but by treating the "pro se" motion as one under FRCP 60 to vacate a dismissal. This is, as above, an error of law, and the ignoring of the plain terms of the Minute Order.

There are no known cases interpreting the terms of such Minute Order in this context. However, given the number of years since the issuance of the Memorandum, there could be a wide applicability to same.

CONCLUSION

On the surface this could appear as a small case not worthy of the special attention of this Court. But small does not mean unimportant, nor does it mean that the issues do not warrant that special attention.

FRCP 11 is a special rule of the Federal Courts essentially requiring attorneys of record to act for their parties in the Court. Here the lower courts literally ignored not only the importance of Rule 11, but the Rule itself, as no Court took any notice of it nor how it applies. Is not the ramification of the rulings below that parties represented by attorneys of record are free to file "pro se" motions? and then appear as "pro se"?

Likewise the fact that the "administrative closing" was pursuant to the Memorandum from the Administrative Office of the U.S. Courts dated June 15, 1973 went without any attention by the below courts. The District Court Judge treated same as if it was a dismissal of the case, not a mere administrative closing, where the reopening occurred automatically upon a further docket entry, and therefore that the "pro se" motion was already "moot" by the time it was decided by the Court because the Clerk had already re-opened the case. Attorneys would have noticed the "mootness".

Finally, the District Court used the fact of the 9/11 disaster against an arabic sounding pro se plaintiff name. Perhaps, the Court may just wish to correct a prejudice.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT FILED APRIL 6, 2004

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE; IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 6th day of April, two thousand four.

Present: HON. THOMAS J. MESKILL,
HON. ROBERT A. KATZMANN,
HON. RICHARD C. WESLEY,
Circuit Judges

Appendix A

SYED SHUAIB,

Plaintiff-Appellant,

-v-

NEW YORK CITY HOUSING AUTHORITY, CONSTRUCTION DEPARTMENT,

Defendant-Appellee,

Appeal from the United States District Court for the Southern District of New York (Cedarbaum, *J.*).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court be and it hereby is AFFIRMED.

Syed M. Tariq Shuaib, plaintiff-appellant appeals the district court's dismissal of Shuaib's complaint for failure to prosecute and denial of his motion for reconsideration.

Having thoroughly reviewed the record, we find that the district court committed no error. Accordingly, the judgment of the district court is AFFIRMED.

FOR THE COURT:
ROSEANN R. MacKECHNIE, CLERK
By: s/ Lucille Carr

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK DATED OCTOBER 18, 2002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

97 Civ. 6955 (MGC)

SYED M. TARIQ-SHUAIB

Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY,
CONSTRUCTION DEPARTMENT,

Defendant.

ORDER

CEDARBAUM, J.

Plaintiff's motion to reopen this case under Fed. R. Civ. P. 60 is denied. This action was administratively closed on September 19, 2000 because plaintiff had failed to pursue it for over two years. Now, two more years have elapsed without any action by plaintiff.

Plaintiff does not contend that there was a clerical error in the closing of this action. Rather, he seems to be arguing only that his inaction constitutes "mistake, inadvertence, surprise, or excusable neglect," within the meaning of

Appendix B

Fed. R. Civ. P. 60(b)(1). Fed. R. Civ. P. 60(b)(1) requires that a motion to reopen a case be filed not more than one year after the action is closed. Because more than two years have elapsed since this action was closed, Fed. R. Civ. P. 60(b)(1) is inapplicable.

Plaintiff asserts that his failure to take any action in this case for four years was due to his belief that his attorney was pursuing the matter. A previous action filed by plaintiff against the same defendant in 1995 was dismissed because of continuing delay and for plaintiff's failure to prosecute his claims. *Shuaib v N.Y.C. Housing Auth et al.*, 95 Civ. 11014 (S.D.N.Y.), *aff'd*, Second Circuit, February 19, 1998, summary order. Plaintiff was therefore on notice that inaction could result in dismissal of an action. Moreover, the inaction in this case has severely prejudiced the defendant. Records of job postings, interviews, and promotions, as well as the files of the Construction Department in which plaintiff was employed, have been destroyed as a result of the events of September 11, 2001.

Accordingly, plaintiff has not provided sufficient reason for reopening the case under Fed. R. Civ. P. 60 (b) (6), and this action is dismissed for failure to prosecute under Fed. R. Civ. P. 41(b).

SO ORDERED.

Dated: New York, New York
October 18, 2002

s/ Miriam Goldman Cedarbaum
MIRIAM GOLDMAN CEDARBAUM
United States District Judge

APPENDIX C — MINUTE ORDER PURSUANT TO MEMORANDUM FROM THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS DATED JUNE 15, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

1:97cv6955(MGC)
(Original filed in)
2:93cv6688(CSH)

Shuaib,

Plaintiff

-against-

NYC Housing Authority,

Defendant

MINUTE ORDER PURSUANT TO MEMORANDUM FROM THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS; DATED JUNE 15TH, 1973

The attached list of cases having been pending for more than three years, all presently contemplated proceedings having been completed, and there having been no action for more than twelve months, there appears to be no further reason at this time to maintain these files as open for statistical purposes, the Clerk is instructed to complete a JS-6 closing report for each case.

Appendix C

Nothing contained in this minute order shall be considered a dismissal or disposition of these matters, and should further proceedings in them become necessary or desirable, any party may initiate it in the same manner as if this minute order had not been entered.

SO ORDERED: Sept 19, 2000
DATED: New York, N.Y.

MICHAEL B. MUKASEY
Chief Judge